88-836

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JULIA McCAIN LAMPKIN ASAM, Ph.D., J.D.

Plaintiff/Appellant

vs.

ROBERT J. SHAPIRO

Defendant/Appellee

APPEAL FROM THE U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

Julia McCain Lampkin Asam, Ph.D.,J.D.
P.O. Box 1022
University, Alabama 35486

6/pp

QUESTION PRESENTED

I. Whether the Plaintiff's 5th and 7th Amendment rights under the U. S. Constitution have been violated because the lower federal courts failed to rule according to the Federal Rules of Civil Procedure, Rule 56(c), when the record clearly shows there is a dispute in this negligent legal malpractice action in a diversity of citizenship case, i.e. the Defendant/Appellee failed to show in the record that there was no genuine issues of material fact, and summary judgment should have not been granted when disputed facts (see Argument) and a demand for jury trial; therefore, the U. S. Court of Appeals, Eleventh Circuit DID NOT rule according to 11th Cir. R. 36-1.

II. Whether the State of Alabama's long arm statute (Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) was held to be invalid and repugnant to the U.S Constitution, Fifth Amendment due process when in fact and law in personam jurisdiction was not lacking in

the U.S. District Court, Northern District of Alabama, Western Division, since the underlying case, 87-6-CIV F.M.17(b) should NOT have been transferred to Florida for lack of in personam jurisdiction due to minimum contacts of Defendant with Alabama i.e. Whether U.S. Court of Appeals, Eleventh Circuit held state statute [Alabama long arm statute, Alabama Rules of Civil Procedure, 4.2 a(2)(I)] repugnant to U.S. Constitution, Amendment V, due process because affirmed summary judgment?

III. The Plaintiff/Appellant incorporates all the issues in Case no. 88-3026 in the U.S. Court of Appeals, Eleventh Circuit, and related issues in 87-390 and 87-345, The Supreme Court of the United States cases, which should have been added as supplement to the record since Plaintiff/Appellant is also appealing the denial of "Motion to Supplement the Record in the U.S. Court of Appeals, Eleventh Circuit.

PARTIES BELOW

All parties below are parties to this petition.

The Plaintiff/Appellant is Julia L. Asam, (Julia McCain Lampkin Asam).

The Defendants/Appellees are Hon. Sam C. Pointer, U.S. District Judge, U.S. District Judge, Northern District of Alabama,Western Division, U.S. Courthouse, Birmingham, Alabama 35203; Hon. Elizabeth A. Kovachevich, U. S. District Judge, U.S. District Court, Middle District of Florida 33602; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St., N.W., Atlanta, Georgia, 30303; INAPRO, P.O. Box 2353, New York, New York 10272, Mr. John D. Shofi, and Ms. Ann O'Hern, Attorneys, Marlow, Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Building, Tampa, Florida 33629, and Mr. Robert J. Shapiro, 13822 Cherry Creek Dr., Tampa, Florida 33618.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties Below	iii
Table of Contents	iv
Table of Citations	v
Statement Regarding Oral Argument ..	ix
Opinion Below	2
Jurisdiction	2
Constitutional Provisions Involved Amendment V and Amendment VII	3
Rules Involved	4
Statement of the Case	5
Argument and Substantiality of Questions	16

I. The Plaintiff's 5th and 7th Amendment rights under the U.S. Constitution have been violated because the lower federal courts failed to rule according to the Federal Rules of Civil Procedure, Rule 56(c), when the record clearly shows there is a dispute in this negligent legal malpractice action in a diversity of citizenship case, i.e. the Defendant/ Appellee failed to show in the record that there

TABLE OF CONTENTS (CONTINUED) Page

was no genuine issues of material fact, and summary judgment should NOT have been granted when disputed facts and a demand for jury trial; therefore, the U. S. Court of Appeals, Eleventh Circuit DID NOT rule according to 11th Cir. R. 36-1..... 16

II. The State of Alabama's long arm statute (Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) was held to be invalid and repugnant to the U. S. Constitution, Fifth Amendment due process when in fact and law in personam jurisdiction was not lacking in the U. S. District Court, Northern District of Alabama, Western Division, since the underlying case, 87-6-CIV 17 (b) should NOT have been transferred to Florida for lack of in personam jurisdiction due to minimum contacts of Defendant with the State of Alabama. i.e. the U.S. Court of Appeals, Eleventh Circuit held state statute [Alabama long arm statute, Alabama

TABLE OF CONTENTS (CONTINUED)

Rules of Civil Procedure, 4.2 a(2)(I)] repugnant to U.S. Constitutuion, Amendment V, due process because affirmed summary judgment. 23

Conclusion 31

Certificate of Service

Appendix

TABLE OF CITATIONS

Cases Cited: Page

Arrowsmith v. United Press International, 320 F. 2d 219, 223 (2d Cir. 1963) 27

Bucks County Playhouse v. Bradshaw, 577 F. Supp. 1203 at 1208 (U.S. Dist. Ct. E.D. PA 1983) 27

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 28

Cagle v. Lawson, 445 So. 2d 564, (Ala. 1984) 30

Calagez v. Calhoun, 309 F. 2d 248, 256 (5th Cir., 1962) 26

Cellotex Corp. v. Catrett, 477 U.S. ___, 91 L. Ed 2d 265, 106 S. Ct. ____, (1986) 20

(1986) 20

Coco v. Winston Industries, Inc. 383 F. Supp. 405 (1974) 18

DeSotacho, Inc. v. Valnit Industries, Inc. 350 So. 2d 447 (Ala. 1977) 28

Dillon Equities v. Palmer & Cay, Inc. 501 So. 2d 459 (Ala. 1986) 28

Gerner v. Hospital Affiliates International, Inc. 602 F. 2d, 685, at 686

TABLE OF CITATIONS (CONTINUED)

Cases Cited: Page

(5th Cir., 1979) 17

Hoffman v. Chandler, 431 So. 2d 499, 502 (Ala. 1983) 28

Impossible Electronics Techniques Inc. v. Wachkenhut Protective Systems, Inc. 669 F. 2d 1026 at 1030 (5th Cir., 1982) 19

Marcus v. St. Paul Fire and Marine Ins. Co., 651 F. 2d 379, at 380 (5th Cir.,1981).. 16,20

New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962, rev'd on other grounds, 376 U.S. 254 (1964) 23,25,28

Partin v. Michaels Art Bronze Co., 202 F. 2d 541, 542 (3rd Cir. 1953) 27

Ray-Mar Beauty College, Inc. v. Ellis Rubin Law Offices, 475 So. 2d 718, 3rd Dist. Court of Appeal of Florida, 1985 22

St. Cyr v. Greyhound Lines, Inc. 486 F. Supp. 724, (U.S. Dist. Court, E.D.N.Y., 1980). 22

Sweat v. The Miller Brewing Co., 708 F. 2d 655 (11th Cir. 1983) 20

Turner v. Southern Ry. Co. 46 F.R.D. 71 9

TABLE OF CITATIONS (CONTINUED)

Case Cited: Page

View-All Inc. v. United Parcel Service, 435 So. 2d 1198 (Ala. 1983) 30

Weiner v. Moreno, 271 So. 2d 217 at 219, (3rd Dist., Dist. Court of Appeal of Florida) 21

OTHER

Barbri Bar Review, Professional Responsibility, p. 7, Standard of care, ...17

Champ Lyons "In personam Jurisdiction in Federal Court," p 13 in Federal Practice seminar, School of Law, The University of Alabama, The Alabama State Bar 17

Alabama Rules of the Court, 1986 Desk Copy, Rule 4.2 a(2)(I), P. 32, COMMENTS 26

U.S. Constitution

AMENDMENT V i,3,16

AMENDMENT VII..... i,3,16

AMENDMENT XIV 15

Statutes Cited

28 U.S.C. § 1254 2

28 U.S.C. § 2106 3

Statutes Cited (Continued)

Page

28 U.S.C. § 1343 (3) 3

28 U.S.C. § 1651 3

42 U.S.C. § 1983 3,13,14,15,25

Rules Cited:

Federal

Federal Rules of Civil Procedure

Rule 56 16,18,19

State

Alabama Rules of Civil Procedure

Rule 4.2 a (2)(I) ..... i,5 ,12,23 24,25,38,29

STATEMENT REGARDING ORAL ARGUMENT AND REQUESTS TO WRITE MERITS' BRIEF

Because of the complexities, irregularities and numerous judicial errors made in the lower court, oral argument is requested so that the Honorable Justices can understand and ask questions.

The Plaintiff/Appellant respectively requests to write the Merits' Brief.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

No. ___

JULIA L. ASAM, Ph.D.,J.D.

Plaintiff/Appellant

vs.

ROBERT J. SHAPIRO,

Defendant/Appellee

APPEAL FROM THE U.S. COURT OF APPEALS, ELEVENTH CIRCUIT

The U.S. Court of Appeals, Eleventh Circuit, is clearly erroneous in affirming the U.S. District Court, Middle District of Florida's decision granting Defendants summary judgment when the summary judgment below was NOT supported by the record because disputed facts in a negligent legal malpractice action i.e. the attorney in the underlying case, Mr. Robert J. Shapiro, Defendant/Appellee, demanded $5000 of unearned money within 48 hours or he would withdraw from the underlying case 86-3142 (87-531 in the Supreme Court of the United

States) after Mr. Shapiro, had received over $12,000 to represent client (Julia Asam). Therefore, the U.S. Court of Appeals, Eleventh Circuit, did not rule according to 11th Cir. Rule 36-1.

OPINION BELOW

The Judgment rendered by the U.S. Court of Appeals, Eleventh Circuit, August 24, 1988, was a "Per Curiam: Affirmed. See 11th Cir. R 36-1", and therefore was without a written opinion. See APPENDIX A. The U.S. Court of Appeals, Eleventh Circuit affirmed a summary judgment in a negligent legal malpractice case in a diversity of citizenship action when the summary judgment is not supported by the record that shows disputed facts.

JURISDICTION

The jurisdiction of the Supreme Court of the United States to review the final judgment order of the U.S. Court of Appeals, Eleventh Circuit, is invoked under 28 U.S.C. §1254, as appeal or Writ.

The Supreme Court of the United States has jurisdiction under 28 U.S.C. §2106, 28 U.S.C. §1343(3), and 42 U.S.C. §1983.

Also see 28 U.S.C. §1651 concerning the extraordinary writs in the denial of the "Motion to Supplement the Reccrd." See Appendix B, attachments to "Notice of Appeal".

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT V

The Plaintiff/Appellant's due process rights under the Fifth Amendment of the U. S. Constitution was violated when an Honorable Court does not rule according to the law, record, and Federal Rules of Civil Procedure, Rule 56(c). The U.S. Court of Appeals, Eleventh Circuit, failed to read the record which clearly showed disputed facts and failed to read the Appellant's brief that pointed out these disputed facts and the summary judgment should nct have been affirmed since the U.S. Court of Appeals did not rule according to 11th Cir. R. 36-1.

AMENDMENT VII

The Defendant failed to show there was no genuine issue of material fact and as a matter of law in a negligent legal malpractice case in a diversity of citizenship case, the case should have been tried before a jury. Since the case should have been tried before a jury and there was a jury demand and no legal reason to affirm summary judgment the Plaintiff/ Appellant's Seventh Amendment rights under the U.S. Constitution was violated.

RULES INVOLVED

The pertinent parts of the following rules involved.

The Federal Rules of Civil Procedure, Rule 56 (c) states,

> "The judgment sought shall be rendered forthwith if the pleadings... admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

Alabama Rules of Civil Procedure 4.2 a(2)(I)

"(I) otherwise having some minimum contacts with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action. The minimum contacts referred to in this subdivision (I) shall be deemed sufficient, notwithstanding a failure to satisfy the requirement of subdivisions (A)-(H) of this subsection (2), so long as the prosecution of the action against a person in this state is not inconsistent with the constitution of this state or the Constitution of the United States."

STATEMENT OF THE CASE

The U.S. Court of Appeals, Eleventh Circuit (case no. 88-3026) without checking the record which clearly showed disputed facts about negligent legal malpractice of the Defendant/ Appellee, ERRONEOUSLY affirmed the underlying case no. 87-6-CIV Ft. M. 17 (B), which is a diversity of citizenhsip with negligent legal malpractice action of Mr. Robert J. Shapiro, also attorney, who made a demand of $5000 unearned money within 48 hours or he would withdraw as attorney in the underlying case number 86-3142 in the U.S. Court of Appeals, Eleventh Circuit.

The Complaint (R1 Complaint) was stamped filed October 30, 1986 as case CV 86 P 2020W in the U.S. District Court, Northern District of Alabama, Western Division. On January 13, 1987, the Hon. Sam C. Pointer ordered the instant case transferred to the U.S. District Court, Middle District of Florida, Fort Myers Division, (R1 Order filed Jan. 13, 1987, and R1 Memorandum Opinion filed Jan. 13, 1987).

After the Defendant did not file the Answer or Requests for Admissions timely, Plaintiff filed on March 9, 1987, Motion for Summary Judgment (R2 34), with affidavit (R2 35) and Memorandum in Support... (R2 36). On April 9, 1987, the Court denied Plaintiff's Motion for Summary Judgment (R2 49).

The Plaintiff/Appellant filed two Writ for Mandamus (87-3184 and 87-7252 which had respectively 87-345 and 87-390 in The Supreme Court of the United States which were denied.)

On November 6, 1987, the Plaintiff filed a Memorandum to Court (R3 80) which stated

in detail disputed facts that would preclude any Summary Judgment.

1. Whether the Defendant, Mr. Shapiro, breached his fiduciary duty and duty of loyalty and honest dealing to his client, Julia Asam, at the time in November 1984, when Mr. Shapiro demanded $5000 of unearned money within 48 hours or he would withdraw after previously receiving over $12,000 i.e. did Mr. Shapiro act as a reasonable prudent attorney in withdrawing and by his sudden manner of withdrawing and failing to release the contingency fee claim also unearned, caused the plaintiff to lose at the trial court level because there was no attorney.

2. Whether the Defendant, Mr. Shapiro breached the retainer contract since the contract did not state he could withdraw from the case within 48 hours after a demand of $5000 unearned money. The contract stated he would represent the client and the

plaintiff had previously always paid whatever money he had requested but there was no time limit of 48 hours.

3. Whether the Defendant, Mr. Shapiro, commited an intentional tort, particularly fraud, which was stated in particular in the Complaint with Exhibits since the Motion to Withdraw sent on Nov. 2, 1984 was different from the one on Nov. 9, 1984.

4. Whether the Defendant, Mr. Shapiro, breached his duty of due care and was negligent by failing to continue to represent Julia Asam until she obtained an attorney, i.e. Mr. Shapiro owed the plaintiff a duty of due care to represent her in the underlying case after receiving over $12,000 and Mr. Shapiro failed to act with the degree and skill of an ordinary general legal practitioner, since Mr. Shapiro did not stay on the case until another attorney was obtained and gave unreasonable notice of 48 hours to withdraw from the case unless he was paid $5000 unearned money.

Mr. Shapiro failed and was negligent by not notifying the Plaintiff at the time he turned over the files that there was an altered and or exchange document in one of his depositions. By the time the plaintiff discovered the said altered document and wrote an amended complaint, the amended complaint was denied by the Court.

All these issues are disputed and therefore, as a matter of law, summary judgment is precluded with the Summary Judgment filed on Nov. 6, 1987 by Defendant.

See Turner v. Southern Ry. Co. 46 F.R.D. 71, which states,

"Issues of negligence are ordinarily not susceptible of summary adjudication. Fed. Rules Civ. Proc. rule 46, 28 U.S.C.A."
Therefore, as a matter of law, the summary judgment should not have been affirmed for a negligent legal malpractice case.

See Argument for additional law p. 16.

The POINT IS the U.S. Court of Appeals, Eleventh Circuit failed to notice in the record the disputed facts (see R3 80, R3 83, R3 84, R3 87, R3 88, R4 104, R4 105 and R4 98) clearly showing that summary judgment was precluded and the case should have been tried before a jury which had been demanded, i.e. the U.S. Court of Appeals, Eleventh Circuit did not rule according to 11th Cir. R. 36-1 (d) which states,

> (d) summary jdugment, directed verdict, or judgment on the pleadings is supported by the record;"

because when the judgment was rendered on August 24, 1988 affirming the lower court without an opinion it was obvious that the Honorable Court had not read the record which clearly shows the disputed facts that preclude any summary judgment.

Defendant/Appellee, Robert J. Shapiro, attorney, was retained to represent Julia Asam, Plaintiff/ Appellant in the 42 U.S.C. §1983

action 86-3142 (87-531) case but Mr. Shapiro committed negligent legal malpractice, which arose in Montgomery, Alabama when Defendant Shapiro made a demand in a letter addressed to Dr. Julia L. Asam, P.O. Box 20544, Montgomery, AL 36120, dated November 2, 1984 [copy of letter attached to Complaint] showing that it was stamped Montgoemery, Alabama and said letter demanded $5000 unearned retainer money or Mr. Shapiro would withdraw as attorney on November 9, 1984 (and Mr. Shapiro did withdraw on November 9, 1984) when the demand was for unearned money of $5000 within 48 hours. Therefore, Mr. Shapiro breached his contract for legal services with an Alabama resident, Julia Asam, Plaintiff/Appellant.

Dr. Asam chose to file the instant underlying case in the U.S. District Court, Northern District of Alabama, Western Division, since she is a resident of Alabama in Tuscaloosa, Alabama. The case should have remained in Alabama since minimum contacts were clear-

ly shown with the State of Alabama according to the forum's state (Alabama) under Alabama Rules of Civil Procedure 4.2 a(2)(I).

Because purposeful transactional business was conducted in the state of Alabama by Mr. Shapiro by his minimum contacts with the state of Alabama as described above, and the underlying case (currently 87-6-CIV F.M. 17 (B) in the U. S. District Court, Middle District of Florida, Fort Myers Division, should be transferred back to the U.S. District Court for the Northern District of Alabama, Western Division, because there is NO LACK OF IN PERSONAM jurisdiction. The Honorable Judge Sam C. Pointer, U.S. District Judge for the U.S. District Court for the Northern District of Alabama, Western Division, made an error in interpreting the forum's state law on minimum contacts under Alabama Rules of Civil Procedure 4.2 a(2)(I).

The alternative court to transfer back into a federal court in Alabama is the U.S. Dis-

trict Court, Middle District of Alabama because the breach of the retainer agreement between Julia Asam and Defendant, Robert J. Shapiro occurred when Mr. Shapiro demanded $5000 unearned money within 48 hours or he would withdraw as attorney in the 42 U.S.C. §1983 underlying action with pendent libel [86-3142 U.S. Court of Appeals, 11th Circuit, and 87-531, The Supreme Court of the United States].

Defendant, Robert J. Shapiro did transact business in the State of Alabama by his admitted correspondence and telephone conversations from Florida to Alabama, and in particular the purposefully minimum contact with the State of Alabama was made when he wrote his letter dated June 1, 1982 to Julia Asam in Alabama negotiating a retainer agreement and requesting not only Julia Asam to sign the agreement but her father to sign the agreement and her father had been an Alabama resident for over 50 years. Further, Defend-

ant Shapiro asked for $2000.00 in the same letter which is transacting business. [See APPENDIX C AND D OF 87-390, The Supreme Court of the United States; also see APPENDIX G OF 87-390 detailing in the quote from Mr. Shapiro's letter that Mr. Shapiro made a demand for $5000 within 48 hours or he would withdraw.]

Mr. Shapiro intentionally would not sign a release from the contingency of the retainer contract until after the underlying § 1983 trial and thus Mr. Shapiro prevented Plaintiff from obtaining counsel for trial in the underlying case.

Mr. Shapiro acted <u>negligently</u> as an attorney by failing to notify the Plaintiff that the defendants in the § 1983 action had altered and exchanged a document in a deposition.

Also see 87-531, The Supreme Court of the United States pp. 16-19 concerning PHANTOM DOCUMENT #34 when the highest document in Exhibits by Defendants was #27 -- p. 19 of

87-531 which showed the U.S. Court of Appeals, Eleventh Circuit was incorrect in affirming the underlying § 1983 action. If Mr. Shapiro had remained on the case since he had already received over $12,000.00 before his 48 hours demand for $5000 of unearned money, the underlying case should have not been lost because the maintaining of a false document in a teacher's personnel file to prevent future employment is clearly stigmatization and a violation of liberty rights under the 14th Amendment to the U.S. Constitution and definitely a 42 U.S.C. § 1983 action.

ARGUMENT AND SUBSTANTIALITY OF QUESTIONS

I. The Plaintiff's 5th and 7 Amendment rights under the U.S. Constitution have been violated because the lower federal courts failed to rule according to the Federal Rules of Civil Procedure, Rule 56(c), when the record clearly shows there is a dispute in this negligent legal malpractice action in a diversity of citizenship case, i.e. the Defendant/ Appellee failed to show in the record that there was no genuine issues of material fact, and summary judgment should NOT have been granted when disputed facts and a demand for jury trial; therefore, the U. S. Court of Appeals, Eleventh Circuit DID NOT rule according to 11th Cir. R. 36-1.

See Marcus v. St. Paul Fire and Marine Ins. Co., 651 F. 2d 379, (5th Cir., 1981), states.

> "A motion for summary judgment may be granted in federal court only if there is no issue as to any material fact and the law favors the moving party, there is no discretion to award summary judgment if this standard is not met. Fed. Rules Civ. Proc. Rule 56(c), 28 U.S.C.A. (Emphasis added.)

Mr. Shapiro breached a fiduciary relationship with his client Dr. Asam by receiving $12,000.00 and then demanding $5000 of unearned money within 48 hours or he would withdraw.

See Gerner v. Hospital Affiliates International, Inc., 602 F. 2d 685, at 686 (5th Cir., 1979) which states,

> "Issues of fact were presented as to whether a fiduciary relationship existed and was breached... thus precluding summary judgment in action by plaintiff..."

The STANDARD FOR MALPRACTICE IS THE REASONABLE ATTORNEY i.e. what would the reasonable attorney have done and should have been a jury question. There was a jury demand.

Barbri Bar Review, defines Standard of care: in Professional Responsibility, p. 7, 1987 as follows for a lawyer:

> "Standard of care: The standard of care for a general practioner is the degree of care, skill, and prudence possessed by general practioners of ordinary skill and capacity. The standard of care is higher for one who purports to be a specialist in a field of law; the degree of care, skill, and prudence possessed by lawyers who specialize in that field."

Defendant, Mr. Shapiro, was holding out to be a specialist in federal cases.

The standard for negligence is what a reasonable man would have done and should have been a jury question is this negligent legal malpractice action.

See Coco v. Winston Industries, Inc., 383 F. Supp. 405 (1974), which states,

> "Generally, summary judgment is not granted in an action based upon negligence. fed. Rules Civ. Proc. Rule 56, 28 U.S.C.A."

Mr. Robert J. Shapiro, Defendant/ Appellee, clearly committed legal malpriactice because he breached the attorney-client contract (R1 Complaint, Exhibit B), breached his fiduciary duty by quitting as attorney after 48 hours notice, acted in bad faith by perpetrating a fraud on the court with a false reason to withdraw, and neglected the client, Julia Asam, in 1983 when he knew or should have known of an altered or exchange document in a deposition.

The trial court made a gross error by not delaying decision on Summary Judgment until discovery was completed, especially discovery

that was pending since the Defendant failed to produce complete accounting (R4 105 -2-¶2), and denying hearing (R4 90).

The trial court made a gross error in not granting the Plaintiff's Summary Judgment or Motion for Default Judgment earlier in the case because the Defendant failed to timely file his Answers and Requests for Admissions, (R1 20 and R2 49). Also see 87-345, The Supreme Court of the United States case.

For the elements to grant a summary judgment, see Impossible Electronics Techniques Inc. v. Wackenhut Protective Systems, Inc. 669 F. 2d 1026 at 1030 (5th Cir., 1982) From U.S. District Court for the Southern District of Florida), which states,

> "Summary judgment should be entered only if "there is no genuine issue as to any material fact and... the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56 (c). See Casey Enterprises v. American Hardware Mutual Insurance Co., 655 F. 2d 598, 601-2 (5th Cir. 1981)."

See the Supreme Court of the United States in Cellotex Corp. v. Catrett, 477 U.S. __, 91 L. Ed. 2d 265, 106 S. Ct. ___, (1986), which states,

> "In our view, the plain language of Rule 56 (c) mandates the entry of summary judgment after adequate time for discovery and upon motion, against a party who fails to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

The bottom line is the Honorable Judge of the trial court ignored the adequate time for discovery according to the Celotex case when the Judge was noticed that adequate discovery was not completed and both sides said needed six more months on Nov. 6, 1987 (R5 4). Defendant had not taken deposition either at the time of the decision on summary judgment, Dec. 21, 1987. (R4 104).

See Sweat v. The Miller Brewing Co., 708 F. 2d 655 (11th Cir. 1983). Also see Marcus v. St. Paul Fire and Marine Ins. co. 651 2d 379, at 380 which held that there is NO DISCRETION to award Summary Judgment unless

the standard is met which is "no issue as to any material fact." Therefore, the U.S. Court of Appeals, Eleventh Circuit, was clearly erroneous in affirming the judgment for summary judgment for Defendant by the trial court; the case should have been before a jury since there were clearly disputed facts and a demand for a jury. See R3 87 and attached exhibits, and R4 105 and attached exhibits and R1 Complaint and attached exhibits) and affidavit (R4 98). See Weiner v. Moreno, 271 So. 2d 217 at 219, (3rd Dist., District Court of Appeal of Florida), which states the elements of negligent malpractice.

(1) The attorney's employment

(2) Attorney's neglect of a reasonable duty

(3) that such negligence resulted in and was the proximate cause of loss to the client."

The instant malpractice action meets all the elements of negligent malpractice and therefore, the case should have been tried

by a jury since the Defendant is denying malpractice. The U.S. Court of Appeals, Eleventh Circuit did not rule according to 11th Cir. R. 36-1.

See St. Cyr v. Greyhound Lines, Inc., 486 F. Supp. 724, (U.S. Dist. Court, E.D.N.Y., 1980), which states,

> "In context of actions alleging defendant's negligence, summary judgment is only rarely granted since existence or nonexistence of negligence is to be determined by appropriate trier of fact's application of "resonable man" standard and therefore genuine issues of fact are almost always presented." (Emphasis added.)

Further the St. Cyr case stated,

> "Issues concerning negligence, such as observance of due care ... are ordinarily not susceptible to summary adjudication."

See the Florida case on malpractice and punitive damages, Ray-Mar Beauty College, Inc. v. Ellis Rubin Law Offices, 475 So. 2d 718, 3rd Dist. Court of Appeal of Florida, 1985, which states,

> "Evidence was sufficient for jury on punitive damages claim in legal malpractice action against law firm and individual attorney." (Emphasis added.)

The instant case should be remanded for trial with the issue of punitive damages reinstated.

II. The State of Alabama's long arm statute [Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) was held to be invalid and repugnant to the U.S. Constitution, Fifth Amendment due process when in fact and law in personam jurisdiction was not lacking in the U.S. District Court, Northern District of Alabama, Western Division, since the underlying case, 87-6-CIV 17 (b) should NOT have been transferred to Florida for lack of in personam jurisdiction due to minimum contacts of Defendant with the State of Alabama i.e. the U.S. Court of Appeals, Eleventh Circuit held state statute [Alabama long arm statute, Alabama Rules of Civil Procedure, 4.2 a(2)(I)] repugnant to U.S. Constitutuion, Amendment V, due process because affirmed summary judgment.

The constitutional issue involving the outer limits of the federal due process of the Fifth Amendment to the United States Constitution was misinterpreted by the Honorable Judge Sam C. Pointer in a diversity of citizenship case involving the Standard of Sullivan, (New York Times Co. v. Sullivan, 273 Ala. 656, 144 So.

2d 25 (1962, rev'd on other grounds, 376 U.S. 254 (1964), doctrine as to the extension of Alabama's long arm jurisdiction (Alabama Rules of Civil Procedure 4.2 is Alabama long arm statute) to the outer limits of due process when the Honorable Sam C. Pointer, Jr., U.S. district Judge transferred the instant underlying case (87-6-CIV F.M. 17 (b) in U.S. District Court, Middle District of Florida, Fort Myers Division) for alleged lack of in personam jurisdiction; therefore, the instant case should be transferred back to the forum state of Alabama. See Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I).

The comments on the Rule 4.2 a(2)(I) in the Alabama Rules of the Court, 1986 Desk Copy, p. 31 states,

> "This subparagraph (I) is but a restatement of the current definition of the federal constitutional standard."

The Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) states,

> "(I) otherwise having some minimum contacts with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action."...

See Champ Lyons "In Personam Jurisdiction in Federal Court," p. 13 in Federal Practice Seminar, School of Law, The University of Alabama, The Alabama State Bar, which states,

> "Complexities of election between state of federal law as controlling on the question of the reach of process initiated pursuant to state law under FRCP 4 are happily short circuited by reason of Alabama's view that the reach of the Alabama "long arm" is coextensive with the outer limits of due process. New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 25 (1962), rev'd on other grounds, 378 U.S. 254 (1964). Furthermore, the necessity for resort to a close analysis of Alabama's transactional bases for an attempt to assert jurisdiction over the person over a non-resident as a prelude to the application of federal standards dealing with due process is also eliminated by reason of Alabama's broad phraseology in connection with assertion of jurisdiction over nonresidents. ARCP 4.2, dealing with bases and methods of service outside of the State of Alabama, delineates specific activity which lead to a prospect for legal liability, and after the delineation of various specific types of activity, concludes with a general characterization of "otherwise having some minimum contact with this state and, under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action" ARCP 4.2 (a)(2)(I)...

The Defendant, Robert J. Shapiro, in the underlying case, in which he as an attorney in a 42 U.S.C. § 1983 action with pendent libel, made minimum contacts with the state

of Alabama to allow federal court (U.S. District Court ofr the Northern District of Alabama) to have in personam jurisdiction, i.e. Mr. Shapiro had minimum contacts with the state of Alabama through correspondence enclosing retainer contract and telephone calls from the state of Florida to the state of Alabama by calling Julia Asam in Montgomery, Alabama from Florida concerning his legal representation.

Defendant Shapiro's letter dated June 1, 1982 to Julia Asam in Alabama with enclosed proposed retainer contract and Defendant Shapiro requested $2,000 was a definite business transaction. [See 87-390 APPENDIX C and D for details, The Supreme Court of the United States case].

See Alabama Rules of the Court, 1986 Desk Copy, p. 32 which states

> ..."federal cases show that transacting business in Alabama would include such factors as ...correspondence with persons in Alabama (Calagaz v. Calhoun, 309 F. 2d 248, 256 (5th Cir. 1962)... (Emphasis added.)

To consider the threshold issue of whether the U.S. District Court for the Northern District Court in Alabama lacks in personam jurisdiction over defendant please consider the following cases.

See Bucks County Playhouse v. Bradshaw, 377 F. Supp. 1203 (1983), a U.S. District Court, E.D. Pennsylvania case, held that

> "To determine if personal jurisdiction exists over nonresident defendant, district court must look to law of state in which it sits."

Also see Arrowsmith v. United Press International, 320 F. 2d 219, 223 (2d cir. 1963); Partin v. Michaels Art Bronze Co. 202 F. 2d 541, 542 (3rd Cir. 1953).

The Bucks County Playhouse v. Bradshaw 577 F. Supp. 1203 at 1208 states,

> "In essence, an inquiry into the personal jurisdiction of a court under the long-arm statute raises but two questions:
> 1) What are the contacts of the defendant with the forum state which give rise to the cause of action complained of and
> 2) Are the contacts constitutionally sufficient under the due process clause."

Alabama law is broader than the Pennsylvania law stated in Bucks County Playhouse v. Bradshaw, supra. The reach of the Alabama long

arm is coextensive with the outer limits of due process. See New York Times Co. v. Sullivan, 273 Ala. 656, 144 So. 2d 24 (1962), rev'd on other grounds, 376 U.S. 254 (1964). See quote from Champ Lyons "In Personam Jurisdiction in Federal Court." on p. 25 of Brief.

State law is defined in Hoffman v. Chandler, 431 So. 2d 499, 502 (Ala. 1983) which states,

> "(1) The term 'State law' includes all laws, decisions, rules, regulations, or other State Action having the effect of law, or any State."

See Dillon Equities v. Palmer & Cay, Inc. 501 So. 2d 459 (Ala. 1986) which states,

> "Physical presence in state is not prerequisite to effective service of process on nonresident defendant; what is required is that out-of-state resident have some minimum contacts with the state so that maintenance of suit does not offend traditional notions of fair play and substantial justice. Rules of Civ. Proc., Rule 4.2 (a)(2)(I); U.S.C.A. Const. Amend. 14. (Emphasis added.)

Also see DeSotacho, Inc. v. Valnit Industries, Inc. 350 So. 2d 447 (Ala. 1977) and Burger King Corp. v. Rudzewica, 471 U.S. 462 (1985).

The cause of action (negligent legal malpractice in the instant underlying case --

87-6-CIV F.M. 17 (b) in the U.S. District Court for the Middle District of Florida, Fort Myers Division) arose out of the minimum contact of correspondence from the Defendant Shapiro to Dr. Asam in Montgomery, Alabama. [See 87-390, The Supreme Court of the United States, brief Appendix G] In this letter dated, Nov. 2, 1984, Mr. Shapiro demanded $5000 unearned money or he would withdraw from the case with 48 hours since the letter was received in Alabama as evidenced by the return receipt 48 hours before Defendant Shapiro said he would withdraw as attorney unless he received $5000 and Mr. Shapiro did withdraw within 48 hours, and said minimum contact was a breach of contract after Mr. Shapiro had received over $12,000 to represent client, Julia Asam, and such breach of contract would justify in personam jurisdiction. (See Alabama Rules of Civil Procedure, Rule 4.2 a (2)(I).

Therefore, Mr. Shapiro made the minimum contact with the forum state, Alabama, which gave

rise to the cause of action complained of in the Complaint of this instant case.

See Cagle v. Lawson 445 So. 2d 564 (Ala. 1984), which states,

> "Where there are a minimum of contacts, and cause of action arises out of the contracts, Supreme court considers the quality and nature of activity in Alabama in order to determine whether maintenance of the suit in Alabama will offend traditional notions of fair play and substantial justice..."

See View-All Inc. v. United Parcel Service, 435 So. 2d 1198 (Ala. 1983) that the court quoting Professor Moore, summarized the correct constitutional requirements in this area:

> "The first requirement is that there must be some minimum contact with the state which results from an affirmative act of defendant. But it is NOT necessary that the defendant have been in the state..." (Emphasis added.)

III. The 22 issues (from 88-3026, U.S Court of Appeals, Eleventh Circuit, Appellant Brief) in #III issues of this Brief incorporating these 22 issues into this appeal, will be discussed in a Merit's brief clearly showing that this negligent legal malpractice action

in this diversity of citizenship case should have been tried by a jury because of disputed facts and as a matter of law the Summary Judgment for Defendants should have been reversed and the case remanded for trial by jury. The original denial of Plaintiff's summary judgment (R2 49) should have been reversed and the case remanded for the damages issues.

As of the writing of the 88-3026 Brief, the Defendant owed the Plaintiff/Appellant in compensatory damages $301,742.00 based on the equivalent loss of wages as a teacher in the underlying § 1983 action (82-91 CIV F.M. 17 in U.S. District Court, Middle District of Florida, Ft. Myers Division, 86-3142 in the U.S. Court of Appeals, 11th Circuit, and 87-531 in the Supreme Court of the United States as appeal but considered certiorari which was denied.) A new compensatory damages amount can be calculated whenever the Plaintiff receives a new pay schedule for teachers.

CONCLUSION

The U.S. Court of Appeals, Eleventh Circuit, was clearly erroneous in affirming the trial court's summary judgment for defendants because the U.S. Court of Appeals, Eleventh Circuit, failed to rule according to the record which clearly showed disputed facts (see pp. 7-10 of this brief) and the U.S. Court of Appeals, Eleventh Circuit failed to rule according to 11th Cir. R. 36-1. The U.S. Court of Appeals, Eleventh Circuit, failed to rule according to law (see Argument in this case) because the Defendant failed to prove there was no genuine material issue of fact.

Alternatively, the denial of Summary Judgment for Plaintiff filed March 9, 1987 (R2 49) OR the denial of Default Judgment order (R1 20) Feb. 19, 1987, should be reversed and the case remanded for trial on issue of damages (both compensatory and punitive) because the liability issue was deemed admitted when the

Defendant untimely filed his Answers and Requests for Admissions. (See #III issue in instant case that incorporated all the issues of the U.S. Court of Appeals, Eleventh Circuit Appellant Brief and is part of the record of the instant appeal). The punitive damages issue should be reinstated because defendant untimely filed his Motion to Strike and the Defendant clearly acted in bad faith and malpracticed the Plaintiff by demanding within 48 hours $5000 of unearned and unowed money or he would withdraw as attorney after receiving over $12,000 attorney fees.

Compensatory damages are $301,742.00 which is the equivalent loss of wages of Plaintiff as a teacher at the Ph.D. rate in the 42 U.S.C. §1983 underlying case. If case is reversed and remanded, the Motion to Join Parties should be reversed to allow defendants, Mr. Neil C. Spector, and the law firm Spector & Shapiro. (R4 100).

District Court, Northern District of Alabama was repugnant to the U.S. Constitution due process of the 5th Amendment since the Court held the Alabama long arm statute, ARCP, Rule 4.2 a (2)(I) to be invalid when the underlying case (87-6-CIV F.M. 17 (b) was transferred for alleged lack of in personam jurisdiction when there was minimum contacts and as a matter of law (see law in Argument) the instant diversity of citizenship case should not have been transferred.

The instant case should be remanded to the U.S. District Court, Northern District of Alabama or the U.S. District Court, Middle District of Alabama because the decision of U. S. trict of Alabama or Northern District of Alabama because the decision of U.S. Court of Appeals, Eleventh Circuit, is clearly erronecus and the Court failed to rule according to its own rule (11th Cir. R. 36-(d).

U.S. Court of Appeals, Eleventh Circuit by affirming and ignoring own Rule 36-1-(d), i.e. ignoring record showing disputes and ignoring State Statute [Alabama long arm statute, Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I)], the U.S. Court of Appeals. Eleventh Circuit, was holding a state statute [Alabama long arm statute, Alabama Rules of Civil Procedur, Rule 4.2 a(2)(I)] REPUG NANT TO THE U.S. CONSTITUTION, AMENDMENT V due process -- the instant case should not have been transferred in a diversity of citizenship (negligent legal malpractice) case from federal court in Alabama, U.S. District Court, Northern District of Alabama, Western Division, to federal court in Florida, U.S. District Court, Middle District of Florida, Fort Myers Division. Because the U.S. Court of Appeals, Eleventh Circuit by affirming as discussed above, and holding a state statute to be repugnant to the U.S. Constitution, the appeal was filed under 28 U.S.C. § 1254 (2). See p. 9 and 54 in Appellant Brief, 88-3026, concerning transferring case.

In Alternative, if case is not considered as an appeal, please consider as Writ for Certiorari.

Dated this 17th day of November, 1988.

Respectively submitted,

Julia L. Asam

Julia L. Asam, Ph.D., J.D.
P.O. Box 1022
University, Alabama 35486

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above JURISDICTIONAL BRIEF was sent to the Honorable Sam C. Pointer, U.S. District Court, Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama, 35203; Honorable Elizabeth A. Kovachevich, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S, District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St. N.W., Atlanta, Georgia 30303; Mr. John D. Shofi, and Ms. Ann O'Hern, Attorneys, Marlow, Shofi et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629; INAPRO, P.O. Box 2353, New York, New York 10272 and Mr. Robert J. Shapiro, 13822 Creek Dr., Tampa, Florida 33618 this 17th day of November 1988.

Julia L. Jason

APPENDIX

INDEX OF APPENDIX

Page

APPENDIX A Judgment entered on August 24, 1988 affirming summary judgment, and there was no opinion but stated, "Per Curiam: affirmed. See 11th Cir. R. 36-1." [When see 11th Cir. R. 36-1 - note Court did not rule according to own rule since failed to rule according to record which clearly showed disputed facts]. 1a

APPENDIX B Notice of Appeal filed on November 8, 1988 with attachments. 2a

APPENDIX C CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED..... 10a

APPENDIX A

Filed and Entered August 24, 1988

[On left "DO NOT PUBLISH" but no opinion]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

88-3026

Non-Argument Calendar

D.C. Docket No. 87-00006

JULIA L. ASAM,

Plaintiff-Appellant,

versus

ROBERT J. SHAPIRO,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

(August 24, 1988)

Before HILL, VANCE and COX, Circuit Judges.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1

"Costs taxed against plaintiff-appellant."

Judgment Entered: August 24, 1988

For the Court: Miguel J. Cortez, Clerk

APPENDIX A (CONTINUED)

By: s/ Karleen McNalt

Deputy Clerk

ISSUED AS MANDATE: Sept 16, 1988

[Certified[A True Copy Attested: Clerk, U.S. Court of Appeals, Eleventh Circuit

By: s/Debbie Cordell

Deputy Clerk

Atlanta, Ga.

APPENDIX B

Notice of Appeal filed November 8, 1988.

IN THE U.S. COURT OF APPEALS

ELEVENTH CIRCUIT

JULIA L. ASAM, Ph.D., J.D.

Plaintiff/Appellant

vs.

ROBERT J. SHAPIRO,

Defendant/Appellee

Case no. 88-3026

NOTICE is hereby given that Julia L. Asam, Ph.D., J.D., (Julia McCain Lampkin Asam),

APPENDIX B (CONTINUED)

Plaintiff/Appellant,above named, hereby appeals to the Supreme Court of the United States from the order of judgment entered on August 24, 1988 by the U.S. Court of Appeals, Eleventh Circuit (See Exhibit 1 [A] attached) and the denial of Appellant's Motion to Supplement the Record on Appeal (Exhibit 2 [B] attached) and further appeals this order of judgment entered on August 24, 1988 which affirmed the lower court to be clearly erroneous based on the 11th Cir. R. 36-1 because the summary judgment below was not supported by the record because disputed facts in a negligent legal malpractice action when the attorney in the underlying case, Mr. Robert J. Shapiro, defendant/appellee, demanded $5000 of unearned money within 48 hours or he would withdraw from the underlying case 86-3142 (87-531 in the Supreme Court of the United States) after Mr. Shapiro, had received over $12,000 to represent client (Julia Asam).

APPENDIX B (CONTINUED)

The Supreme Court of the United States has jurisdiction under the following:

28 U.S.C. §1254; 28 U.S.C. §2106; 42 U.S.C. §1983 (underlying case since negligent legal malpractice case under 28 1332

Notice of Appeal to Supreme Court of the United States from U.S. Court of Appeals, Eleventh Circuit ... p. 2

diversity of citizenship); 28 U.S.C. §1343 (3) and 28 U.S.C. §1651 (reference 87-3184 and 87-7252 in U.S. Court of Appeals Eleventh Circuit).

Proof of Service attached as well as Certificate of Service.

Jurisdictional Briefs (40 copies) will be sent to the Supreme Court of the United States together with the $200 docket fee.

Respectfully submitted,

s/ Julia Asam

Julia L. Asam, Ph.D., J.D.

P.O. Box 1022

University, Alabama 35486

APPENDIX B (CONTINUED)

Attachments

Exhibits 1 and 2

Proof of Service

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Notice of Appeal was sent to the Honorable Sam C. Pointer, U.S. District Court, Northern District of Alabama, U.S. Courthouse, Birmingham, Alabama 35203; Honorable Elizabeth A. Kovachevich, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; Clerk, The Supreme Court

"Notice of Appeal to Supreme Court of the United States from U.S. Court of Appeals, Eleventh Circuit p.3

of the United States, U.S. Supreme Court Building, 1 First St. N.E., Washington, D.C. 20543; Mr. John D. Shofi, and Ms. Ann O'Hern,

APPENDIX B (CONTINUED)

Attorneys, Marlow Shofi, et al., 2907 bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629, INAPRO, P.O. Box 2353, New York, New York 10272 and Mr. Robert J. Shapiro, 13822 Creek Dr., Tampa, Florida 33618 this 4th day of November 1988.

s/ Julia L. Asam

Exhibit A [Exhibit 1] is APPENDIX A p. 1a.

Exhibit B p. 1

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 88-3026

[stamped on right] U.S. Court of Appeals, Eleventh Circuit, FILED APR 19, 1988, Miguel J. Cortez, Clerk.

JULIA L. ASAM,

Plaintiff-Appellant,

versus

ROBERT J. SHAPIRO

APPENDIX B (CONTINUED)

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

ORDER:

Appellant's motion to supplement the record on appeal is denied.

s/ James C. Hill

United States Circuit Judge

Exhibit B p. 2

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Filed U.S. Court of Appeals, Eleventh Circuit, Mar 17, 1988, Miguel J. cortez, Clerk, [stamped on right]

[stamped in center] U.S. Court of Appeals, Received Mar. 17, 1988, Atlanta, GA.

JULIA L. ASAM,

Plaintiff/Appellant,

v.

ROBERT J. SHAPIRO

Defendant/Appellee

APPENDIX B (CONTINUED)

MOTION TO SUPPLEMENT THE RECORD

Comes now Julia L. Asam, Ph.D., J.D., Pro Se, Plaintiff/Appellant and moves this Honorable Court to Supplement the Record in Case no. 88-3026 with the following briefs by Julia Asam.

The briefs are Supreme Court of the United States cases related to the instant case 88-3026.

1. 87-345 Jurisdictional Statement and/or Petition.

2. 87-345 Petition for Rehearing

3. 87-390 Jurisdictional Statement and/or Petition

4. 87-390 Petition for Rehearing

5. 87-531 Jurisdictional Statement (underlying case to the instant case no. 88-3026).

6. 87-531... Brief Opposing Motion to Dismiss.

7. 87-531 Peition for Rehearing

Each of the briefs above were sent to the U.S. Court of Appeals for the Eleventh Circuit at the time of briefing as a reference

APPENDIX B (CONTINUED)

copy to 87-3184, 87-7252, or 86-3142.

The Plaintiff/Appellant needs to reference the above briefs when writing the Appellant Brief for 88-3026 because the issues in the Appellant Brief 88-3026 are related to issues in the above briefs written by Julia Asam. [End of first page].

Page 2 Motion to Supplement the Record

The plaintiff/Appellant would appreciate a ruling on this motion to Supplement the Record by March 28, 1988 so that the plaintiff/Appellant would be able to timely file a Motion to Expand the Number of Pages of the Appellant Brief. It will not be necessary to write a Motion to Expand the Number of Pages of the Appellant Brief if the Appellant is allowed to reference the above listed "summary" briefs on issues in the instant case no. 88-3026.

Respectively submitted,

s/Julia L. Asam

APPENDIX B (CONTINUED)

Julia L. Asam, Ph.D., J.D.

Pro Se

P.O. Box 1022

University, Alabama 35486

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the above Motion to Supplement the Record was sent to Ms. Ann O'Hern, Attorney, Marlow, Shofi, et al., 2907 Bay to Bay Blvd. Ste. 201, The Bayshore Buildings, Tampa, Florida 33629 this 15th day of March 1988.

s/ Julia L. Asam

Exhibit B p. 3

APPENDIX C

CONSTITUTIONAL PROVISIONS

AND STATUTES INVOLVED

United States Constitution, Amendment I.,

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the

APPENDIX C (CONTINUED)

right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

United States Constitution, Amendment V

in pertienent part, as follows:

"No person shall... be deprived of life, liberty or property, without due process of law..."

United States Constitution, Amendment XIV

"Section 1, All persons born or natrualized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside; No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor the equal protection of the laws."

United States Constitution, Amendment VII

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,

APPENDIX C (CONTINUED)

and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

FEDERAL STATUTES

42 U.S.C. §1983

"Every person who, under color of any statute, ordinance, regulation, custom, usuage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities accured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

28 U.S.C. §1343(3)

3) To redress the deprivation, under color of any State law, statute, ordinance regulation, custom or usuage, or any right, privilege or immunity secured by the Constitution

APPENDIX C (CONTINUED)

of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;"

28 U.S.C. §2106

"The Supreme Court of any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of court lawfully brought before it for review, and many remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

28 U.S.C. §1254

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

APPENDIX C (CONTINUED)

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted the Federal questions presented;"

28 U.S.C. §1651

"(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usuages and principles of law.

ALABAMA STATUTE

Alabama Long Arm Statute

Alabama Rules of Civil Procedure, Rule 4.2 a(2)(I) states,

"(I) otherwise having some minimum contacts with this state, and under the circumstances, it is fair and reasonable to require the person to come to this state to defend an action."...